CNMV
Comisión Nacional del Mercado de Valores

Final report with the feedback statement on the consultation regarding the role of the proxy advisory industry. March 2013.

ESMA has published, the 19 February, the final report with the feedback statement on the consultation regarding the role of the Proxy advisory industry.
Proxy advisors can offer a variety of services: on one side, analysing the proposals for general meetings and providing voting recommendations and, on the other, offering services with regard to the whole voting logistic and transmitting the voting instructions to the issuers. Proxy advisors usually work for institutional investors such as asset managers, mutual funds and pension funds but, also, can provide a range of other analytical and consulting services connected to the voting process and to corporate governance issues in general.

The report contains an analysis of the responses received to its March 2012 consultation and sets out the next steps for ESMA and the industry.

ESMA concludes that there is no current market failure related to proxy advisors interaction with investors and issuers in the European Union (EU), which would require urgent regulatory intervention but, at the same time, recognizes that the proxy advisory industry is growing in importance and that it would be very convenient to identify a number of concerns (key isues) related to this industry performance and, just in case they are needed in the future, the possible responses in terms of policy action.

A significant number of market participants that have contributed to the consultation on proxy advisors have indicated that they would like to see some form of encouragement at European level for the development of a code of conduct.

ESMA has decided the most accurate approach is provided by number 2 of the 4 policy options proposed in the previous discussion paper and, for developing this option, ESMA will actively encourage the industry to self-regulate and recommends that the proxy industry should develop an EU Code of Conduct.

The Report sets out a framework for a Code, including the roles of the different stakeholder groups, the relationship with other corporate governance codes for issuers and the key principles concerning proxy advisors which ESMA would expect such a Code to cover; this framework is intended to offer guidance to the industry committee developing an industry-wide Code:

1.Identifying, disclosing and managing conflicts of interest.

Potential conflicts of interest could be take place in different situations, for example, when proxy advisors provide corporate ratings or other consultancy services to issuers and at the same time offer proxy research and advice to institutional clients with respect of those issuers, or when an issuer or its shareholders could influence the advice proxy advisors give to investor clients because of the nature of the issuer´s relationship with the proxy advisor, etc.

Proxy advisors should seek to avoid conflicts of interest with their clients. Where a conflict effectively or potentially arises the proxy advisor should adequately disclose this conflict and the steps which it has taken to mitigate the conflict, in order that the client can make a properly informed assessment of the proxy advisor’s advice.

2. Fostering transparency to ensure the accuracy and reliability of the advice.

Proxy advisors should provide investors with information on the process they have used in making their general and specific recommendations and any limitations or conditions to be taken into account on the advice provided so that investors can make appropriate use of the proxy advice.

i.) Disclosing general voting policies and methodologies.

Proxy advisors should, where appropriate in each context, disclose both publicly and to client investors the methodology and the nature of the specific information sources they use in making their voting recommendations, and how their voting policies and guidelines are applied to produce voting recommendations.

ii.) Considering local market conditions

Proxy advice is generally a cross-border activity which requires the awareness of different laws governing issuers´s activities in different jurisdictions, accordingly proxy advisors should be aware of the local market, legal and regulatory conditions to which issuers are subject, and disclose whether/how these conditions are taken into due account in the proxy advisor's advice.
iii.) Providing information on engagement with issuers

Proxy advisors can choose whether or not to have a dialogue with issuers but if they do choose to have such a dialogue they should inform investors about their dialogue with issuers, and of the nature (timing, frequency, intensity and format) of that dialogue.

ESMA shall review the development and the impact of any Code two years after the publication of this Final Report, and may reconsider its position if no substantial progress has been made in that time.
If you want to read ESMA´s final report with the feedback statement on the consultation regarding the role of the Proxy advisory industry, please, do click on:.http://www.esma.europa.eu/system/files/2013-84.pdf